IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1737 OF 2004
IN
FIRST APPEAL NO.594 OF 2004

Parubai Baburao Kalbhor, Applicant-Appellant

Vs

1. Special Land Acquisition Officer, Pune and ors. Respondents.

Mr Ashok M.Garad, for the applicant.(Absent).
Mrs G.P.Mulekar, AGP for respondent no.1
Mr S.V.Sadavarte, for respondent nos 2 to 22.

CORAM : S.B.MHASE &
D.B.BHOSALE, JJ.

DATE : FEBRUARY 02, 2005.

P.C.

1. Heard Mr.Sadavarte, learned counsel for respondent nos 2 to 22 and Mrs Mulekar, learned AGP for respondent no.1. Mr.Garad, learned counsel for the applicant remained absent, though served.

2. The lands of the applicant and the respondents were acquired under the Maharashtra Industrial Development Act, 1961 and the compensation had been fixed by the Collector. However, as there was a dispute in respect of apportionment, by invoking powers under section 35 of the Maharashtra Industrial Development Act, 1961 the Collector had

made a reference to the Civil Court. The reference was numbered as 1 of 2002 by the Court of Extra Joint District Judge, Pune and it was decided on 17.4.2004. In the said reference, the claim of the applicant was accepted as 1/148th share, amounting to Rs.2,49,933/-. Being aggrieved by the said order and the Award of the reference Court, the present appeal is filed. It is admitted. However, the ad-interim stay has been granted on 5.5.2004. Thereafter, the respondents have appeared and have made several requests to hear the matter on merit and to vacate the stay. The learned Advocate, Mr Garad, who comes from Pune was not regularly attending the Court and practically at the direction of this court every time a notice was given to him. On the last occasion, i.e. on 10.1.2005, we passed an order that if tomorrow, i.e. 11.1.2005, the concerned Advocate does not remain present, the appeal shall stand dismissed. On such an order being passed, the learned counsel for the applicant appeared before this Court on 11.1.2005. On 11.1.2005 we heard the matter and we were inclined to vacate the stay. However, the learned counsel for the applicant made a statement that he will take instructions from the applicant in respect of certain facts which are involved for adjudication of the stay application

and, therefore, we granted time for three weeks.

3. The matter appeared yesterday on board. The Advocate for the applicant was absent. Therefore, we passed a detailed order and directed the respondents to intimate the learned advocate for the applicant that the matter will be heard today. Accordingly, telegraphically the date is conveyed to the learned Advocate and, in proof of that, a receipt of the telegram and a copy of the telegram is produced on record by the learned counsel for the respondents. Inspite of this communication, the learned counsel for the applicant is absent.

4. Our attention is brought to the facts that while making a claim before the reference Court, the respondents have filed their Statement of Claim. From it, it is reflected that the applicant is a daughter of Bhairu Narayan Bodake. Bala Narayan Bodake has expired on 16.8.1927. However, Bala Narayan Bodake had expired when he was joined with his brother Bhairu. All the respondents are from the branch of Bhairu and Bhairu expired in the year 1969. It is further revealed that the wife of Bala, i.e. the alleged mother of the applicant, expired in 1978. If all these facts are taken into consideration,

prima facie, it reveals that even though the applicant is a daughter of deceased Bala, she is not entitled to have any share in the property. Inspite of that, the Award has shown that there is 1/48th share. Therefore, prima facie, we find that there is no case made out for grant of stay. The ad-interim stay, granted on 5.5.2004 is hereby vacated. The civil application is, accordingly, disposed of.

(D.B.Bhosale, J.) **(S.B.MHASE, J.)**

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